

The Honorable Patrick Oishi

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STATE OF WASHINGTON
SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING

HUNTERS CAPITAL, LLC; HUNTERS PROPERTY HOLDINGS, LLC, AND GREENUS BUILDING, INC.

Case No. 21-2-06780-4 SEA

HUNTERS CAPITAL'S FIRST AMENDED COMPLAINT

Plaintiffs,

V.

THE HANOVER AMERICAN
INSURANCE COMPANY,

Defendant.

I. PARTIES

1. Hunters Property Holdings, LLC (“HPH”) is a Washington limited liability company. HPH is the sole member of the following single-asset limited liability companies: Dunn Automotive Building, LLC, Lots II, LLC, 900 E. Pine, LLC, Moore Family Building, LLC, Pike Building, LLC, Ballou Wright Building, LLC and Colman Automotive, LLC (collectively “the LLCs”). The LLCs are the owners of properties insured at all relevant times by Hanover Insurance Company. The members of HPH are citizens of New York, California, and Washington.

2. Greenus Building, Inc., was incorporated in Washington and has its principal place of business in Washington. Greenus Building, Inc. is the sole owner of the Greenus Building, a property insured by Hanover Insurance Company at all relevant times.

1 3. Plaintiff Hunters Capital, LLC (“HC”) is a Washington limited liability company.
 2 HC acts as the agent for HPH, the LLCs, and Greenus Building, Inc. In its capacity as agent, HC
 3 is responsible for leasing, maintaining, securing insurance for and the financial administration of
 4 the properties insured by Hanover Insurance Company. The only member of HC is Michael
 5 Malone, a citizen of Washington. HC, HPH, and Greenus Building, Inc. are collectively referred
 6 to herein as “Hunters Capital.”

7 4. Defendant The Hanover American Insurance Company (“Hanover”) is a
 8 corporation organized and existing under the laws of the state of Delaware with its principal
 9 place of business at 440 Lincoln Street, Boston, MA 01653-1000. At all times material to this
 10 complaint, Hanover was conducting business in King County, Washington.

11 **II. JURISDICTION AND VENUE**

12 5. The Court has jurisdiction over the parties and subject matter of this action.

13 6. Venue is proper in King County, Washington.

14 **III. FACTS**

15 7. Hunters Capital manages and operates a number of commercial and mixed-use
 16 properties located in and around the Capitol Hill neighborhood of Seattle, Washington. At all
 17 times material to this lawsuit, those properties were insured by Hanover pursuant to all-risks
 18 “commercial property coverage” contained in policy ZZ2 D241525 03 (the “Policy”).

19 8. The Policy contains a “Business Income (and Extra Expense) Coverage Form” in
 20 which Hanover promises to pay Hunters Capital for loss sustained as a result of the slowdown or
 21 cessation of business activities caused by direct “physical loss of or damage to” the insured
 22 properties. The Policy is written on all-risks basis, meaning that any peril not excluded provides
 23 coverage. In addition, the Policy specifically makes “riot,” “civil commotion”, “smoke”, and
 24 “vandalism” covered causes of loss for the purposes of business income loss coverage.

25 9. Property coverage under the Policy is broadened through various endorsements
 26 marketed and sold by Hanover as significantly enhancing coverage, including a “Gold Property

1 Broadening Endorsement" and a "Real Estate Property Broadening Endorsement." The Policy,
 2 alone and in conjunction with these and other endorsements, provides numerous additional
 3 coverages. These include, but are not limited to: losses caused by action of civil authority,
 4 physical loss or damage to dependent properties, covered emergencies such as attempted or
 5 threatened violent acts, denial of access to premises, lease cancellation due to untenability,
 6 and tenant replacement expense.

7 10. Beginning in approximately May 2020, Seattle's Capitol Hill neighborhood
 8 became the scene of ongoing civil unrest, commotion and protests, arising out of, among other
 9 things, the murder of George Floyd and the conduct of the Seattle Police Department. The
 10 protesters were met by police in riot gear. Tear gas, flashbangs and pepper spray were employed
 11 to quell the commotion. On June 7, 2020, a man drove his vehicle into a crowd of protesters and
 12 began shooting.

13 11. On June 8, 2020, Seattle police reported that crowds were throwing rocks, bottles,
 14 and fireworks, and shining lasers into officers' eyes. Protesters barricaded and took over a six-
 15 block area of Capitol Hill, declaring it an "autonomous zone." Police boarded up the East
 16 Precinct building in the protest area and abandoned it, abdicating responsibility for protecting
 17 citizens and property from the unrest. The precinct's desertion came after Seattle's Mayor, Jenny
 18 Durkan, ordered the removal of protest barriers near the East Precinct.

19 12. The autonomous zone taken over by protesters came to be known as the Capitol
 20 Hill Occupied Protest ("CHOP"). The CHOP occupation created obstructions which prevented
 21 access to the premises owned and operated by Hunters Capital, its tenants and/or their customers
 22 both within the CHOP zone and in the nearby vicinity. Masked protesters, some carrying guns,
 23 roamed the streets, smashing windows and looting. Seattle police would not respond to calls for
 24 help in the area while, simultaneously, paramedics with the Seattle Fire Department would not
 25 respond to calls without a police escort. During June, there were at least four shootings in the
 26 CHOP zone, two of them fatal. On June 24, 2020, a group of Capitol Hill businesses and

1 residents affected by the occupation sued the City of Seattle for its “unprecedented decision to
 2 abandon and close off an entire city neighborhood, leaving it unchecked by the police, unserved
 3 by fire and emergency health services, and inaccessible to the public at large.”

4 13. Protestors within the CHOP zone and in the nearby vicinity repeatedly looted
 5 Hunters Capital’s properties and damaged them, including graffiti, broken windows, and other
 6 physical damage. In one case, a bullet went through a commercial tenant’s office space and was
 7 found lodged in the ceiling. When Hunters Capital attempted to resolve the damage, protestors
 8 informed Hunters Capital’s workers that if they proceeded, the protestors would burn down
 9 Hunters Capital’s buildings. Countermeasures by police, when they occurred, resulted in tear gas
 10 and smoke migrating into Hunters Capital’s tenant’s homes and businesses.

11 14. Hunters Capital’s employees, tenants and residential residents were repeatedly
 12 threatened by CHOP inhabitants/participants/protesters. The ongoing and dangerous riot/civil
 13 commotion, intimidation, harassment, and its accompanying physical damage to Hunters
 14 Capital’s insured premises caused many of Hunters Capital’s commercial tenants (and their
 15 patrons) and residential tenants to abandon the area.

16 15. Property Claims Services (“PCS”), a service that assists the insurance industry in
 17 identifying, tracking and managing catastrophic incidents, declared the CHOP zone protests to be
 18 a “catastrophe” from the period May 26 to June 8, 2020. PCS’s declaration reflects its
 19 determination that property damage losses from the catastrophe are likely to exceed \$25,000,000.

20 16. On or about August 6, 2020, Hunters Capital submitted a notice of loss or claim
 21 (the “Claim”) to Hanover, seeking reimbursement under the Policy for costs to repair property
 22 damage to its premises caused by the civil commotion, riot, vandalism, and occupation of the
 23 CHOP zone, as well as business income loss and extra expense caused by the same.

24 17. Upon receipt of the Claim, Hanover assigned an “adjuster consultant” in Ohio to
 25 determine coverage under the Policy. Although the adjuster, Steven Morris, had no familiarity
 26 with the CHOP zone or the civil commotion crisis in Seattle, he immediately informed Hunters

1 Capital that he did not believe there would be any business income loss coverage. Then, rather
 2 than request an objective coverage analysis from outside claims counsel familiar with
 3 Washington law, Mr. Morris sought to justify his position that there was no business income loss
 4 coverage by seeking input from the Property & Liability Resource Bureau (“PLRB”) in Downers
 5 Grove, IL, a trade association serving casualty insurance companies and underwriters. Mr.
 6 Morris’s correspondence to the PLRB does not attempt even a pretext of neutrality: it flatly
 7 states Hanover’s belief that no business income loss coverage to Hunters Capital was owed.

8 18. In its response to Mr. Morris, PLRB concluded (1) that civil authority coverage
 9 “likely” did not apply because the City’s abandonment of the CHOP zone in response to
 10 protesters barricading the area “arguably” fell short of “an action of civil authority” that would
 11 trigger coverage and (2) that Washington courts “might not” consider Hunters Capital’s loss of
 12 use of the properties it manages to constitute a “physical loss” that would trigger coverage.
 13 PLRB did conclude that denial of access to premises coverage “might be” applicable because
 14 property damage caused by protesters had hindered, and in cases prevented, the ability of
 15 Hunters Capital’s employees and its tenants to access the premises.

16 19. With nothing but the equivocal conclusions of PLRB to rely upon, Hanover
 17 denied Hunters Capital’s business income loss and extra expense claim in its entirety. Hanover’s
 18 denial letter attempted to justify its decision by arguing that the Policy’s insuring clause was not
 19 triggered unless damage rendered the premises “untenantable,” an undefined term in the Policy
 20 only relevant to one of the two definitions of “suspension.” Hunters Capital’s tenant replacement
 21 expense loss was denied on a similar untenantability rationale.

22 20. Notwithstanding PLRB’s advice that denial of access coverage may apply,
 23 Hanover also denied that aspect of the Claim. Hanover did not even consider whether extended
 24 business income loss coverage might be owed, or whether coverage was owed under any other
 25 portion of the Policy. In short, other than accepting some of Hunters Capital’s Claim for
 26 expenses incurred to repair physical damage to the insured premises, Hanover denied Hunters

1 Capital's Claim outright.

2 21. The legal premise for Hanover's denial—that a policyholder cannot suffer "direct
 3 physical loss of" property unless the property is structurally altered/physically damaged—has
 4 already been rejected by Washington courts. *See Perry Street Brewing Co. v. Mutual of
 5 Enumclaw Ins. Co.*, No. 20-2-02212-32, (Wash. Super. Ct. Nov. 23, 2020) (attached as Exhibit
 6 A); *Hill and Stout v. Mutual of Enumclaw Ins. Co.*, No. 20-2-07925-1-SEA (Wash. Super. Ct.
 7 Nov. 13, 2020) (attached as Exhibit B); *see also Nautilus Grp., Inc. v. Allianz Glob. Risks US*,
 8 2012 WL 760940 (W.D. Wash. Mar. 8, 2012) (rejecting insurer's argument that business income
 9 loss triggered by direct physical loss of or damage to property "requires proof that the property at
 10 issue has been physically altered.").

11 22. Not only does the premise for Hanover's denial lack any legal support, it lacks
 12 any factual support as well. Hunters Capital's buildings were structurally altered/physically
 13 damaged, its tenants were physically denied the use of their spaces, and public and private
 14 property (including Hunter Capital's insured properties) inside and around the CHOP zone were
 15 under relentless physical attack for weeks.

16 23. Hunters Capital relied on the bases set forth in Hanover's denial letter in bringing
 17 this litigation.

18 **IV. FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

19 24. Hunters Capital repeats and realleges each and every preceding paragraph as
 20 though fully set forth herein.

21 25. Hanover's actions and omissions as described herein constitute breaches of the
 22 Policy.

23 26. Hunters Capital has been damaged by Hanover's breach of contract in an amount
 24 to be proven at trial, but not less than \$3,270,608.11.

25 **V. SECOND CAUSE OF ACTION: BAD FAITH**

26 27. Hunters Capital repeats and realleges each and every preceding paragraph as

1 though fully set forth herein.

2 28. Hanover's actions and omissions as described herein were/are unreasonable and,
3 therefore, in bad faith.

4 29. As a result, Hunters Capital has been directly and proximately damaged by
5 Hanover's bad faith in an amount to be proven at trial, not less than \$3,270,608.11.

6 **VI. THIRD CAUSE OF ACTION: PER SE AND NON PER SE CPA
7 VIOLATIONS**

8 30. Hunters Capital repeats and realleges each and every preceding paragraph as
9 though fully set forth herein.

10 31. Hanover's acts and omissions as described above violated multiple provisions of
11 WAC 284-30-330 including, but not limited to, subsections (4), (7) and (13); such violations are
12 per se violations of RCW 19.86, Washington's Consumer Protection Act (the "CPA").

13 32. Hanover's acts and omissions, as pled above, also constitute non per se violations
14 of the CPA. Such unreasonable acts and omissions were unfair or deceptive, occurred in trade or
15 commerce, and affected Washington's policyholders and the public interest.

16 33. Such unfair or deceptive acts or omissions directly and proximately caused and
17 continue to cause Hunters Capital to suffer damages in an amount to be proven at trial. These
18 damages include, but are not limited to, the deprivation of policy benefits owed to Hunters
19 Capital and the costs associated with bringing this action for coverage, including court costs and
20 attorney fees.

21 34. Hunters Capital is entitled to recover its actual damages and attorneys' fees, as
22 well as treble damages up to \$25,000 per violation, pursuant to RCW 19.86.090.

23 **VII. FOURTH CLAIM FOR RELIEF: INSURANCE FAIR CONDUCT ACT
24 VIOLATION**

25 35. Hunters Capital realleges and incorporates by reference each and every preceding
26 paragraph.

36. Pursuant to RCW 48.30.015(8), Hunters Capital sent notice to Hanover of Hunters Capital’s intent to assert a cause of action against Hanover under the Insurance Fair Conduct Act (“IFCA”) on May 21, 2021.

37. Hanover failed to resolve Hunters Capital's claim within the 20-day statutory period.

38. As such, Hunters Capital has met its statutory obligations under IFCA.

39. Hanover is liable under IFCA for, among other things: failing to conduct a reasonable investigation into the Claim; compelling Hunters Capital to initiate litigation to recover amounts due to it under the Policy; failing to reasonably connect the Policy language, on which the denial relies, to the facts of the Claim and the controlling law; and for unreasonably denying Hunters Capital's claim, and all policy benefits.

40. Hanover's acts and omissions in violation of IFCA have proximately and directly caused and continue to cause Hunters Capital to suffer damages in an amount to be proven at trial.

41. Hunters Capital is entitled to recovery for its actual damages, attorney fees, litigation costs, and expert witness fees pursuant to RCW 48.30.015(3).

42. The jury may award up to three times Hunters Capital's actual damages pursuant to RCW 48.30.015(3).

VIII. FIFTH CAUSE OF ACTION: DECLARATORY RELIEF

43. Hunters Capital repeats and realleges each and every preceding paragraph as though fully set forth herein.

44. There is a ripe justiciable dispute between Hunters Capital and Hanover concerning their respective rights and obligations under the Policy. Accordingly, Hunters Capital seeks declaratory relief on, at a minimum, the following topics:

A. A declaration that the Claim is covered under the Policy, including but not limited to under the Policy's Business Income and Extra Expense coverage;

- 1 B. A declaration that Hanover unreasonably denied coverage;
- 2 C. A declaration that Hanover failed to conduct a reasonable investigation of
- 3 the Claim;
- 4 D. A declaration that Hanover's acts and omissions violated Washington's
- 5 Consumer Protection Act;
- 6 E. A declaration that Hunters Capital is liable under IFCA for its conduct as
- 7 alleged herein; and
- 8 E. A declaration that Hanover is limited to asserting those coverage defenses
- 9 set forth in its December 1, 2020 coverage denial letter.

10 **IX. REQUEST FOR RELIEF**

11 WHEREFORE, Hunters Capital prays for judgment in their favor against Hanover as
12 follows:

- 13 1. For damages for the causes of action listed above in an amount to be proven at trial,
14 not less than \$3,270,608.11;
- 15 2. For declaratory relief, as described above;
- 16 3. For an award of attorneys' fees, expert costs, and other costs incurred in bringing
17 this action;
- 18 4. For treble damages under the Consumer Protection Act up to the statutory
19 maximum;
- 20 5. For treble damages under IFCA; and
- 21 6. For pre- and post-judgment interest;
- 22 7. For such other and further relief as the Court deems appropriate.

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1 DATED this 25th day of June, 2021.
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s/ Tristan N. Swanson

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